

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)
)
)
)
v.) **CRIMINAL No. 2:19-cr-123-DBH**
)
DAMON FAGAN,)
)
DEFENDANT)

PROCEDURAL ORDER

The defendant has moved (1) to reopen his suppression hearing and my February 11, 2020, denial of his suppression motion; (2) to allow supplemental information on the motion; and (3) for discovery. (ECF Nos. 118-20.) He also asks for a hearing.

The impetus for his motions is information that came to light later in a different case, namely, recorded statements by the arresting trooper as to his practice in stopping vehicles, which the defendant contends show racial profiling. The government consents to reopening the suppression hearing and allowing further cross-examination of the trooper. Gov't's Resp. to Def.'s Mot. to Reopen Suppression Hr'g at 2 (ECF No. 126). In response to a request for any complaints against the trooper "based on accusations of racial bias, the use of racial slurs, etc.," the government confirms its ongoing obligations under Brady and Giglio to furnish such material. Gov't's Opp'n to Def.'s Mot. for Disc. at 5 (ECF No. 125). However, it resists other requested discovery.

I **GRANT** the uncontested motion to reopen the suppression hearing. The Clerk's Office shall schedule a testimonial hearing on the motion to suppress as soon as the pandemic permits it to occur safely. I will allow oral argument on the motion for discovery by either telephone or videoconference, but first I request the government to inform the court and opposing counsel by December 23, 2020, as to the volume of material covered by requested items 1 and 2 of the motion¹ and whether privacy interests of third parties are implicated.

So ORDERED.

DATED THIS 9TH DAY OF DECEMBER, 2020

/S/D. BROCK HORNBY

D. BROCK HORNBY

UNITED STATES DISTRICT JUDGE

¹ All communications between the trooper and dispatch from 9 p.m. until midnight on January 6, 2019 (the stop occurred around 11 p.m.), and all electronic requests from the trooper regarding vehicles operating on the interstate during the same time period.